86-774

Supreme Court, U.S.
FILED
OCT 22 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

NICHOLAS CAMAROTA,

*Petitioner,*

v.

DANIEL E. BERGER ET AL,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS THIRD CIRCUIT

N. CAMAROTA, PRO SE
118 Joanna Drive
Toms River, New Jersey 08753
(201) 349-5445

42 pp

## QUESTION PRESENTED FOR REVIEW

Whether under the perdent Jurisdiction of the Federal District Court, that Court should decide the legality of a state eviction proceeding ensuing pursuant to United States bankruptcy proceedings and allegedly violating certain federal statutes, i.e. 18 U.S.C. Sec. 1961-1968 (''RICO'') and 42 U.S.C. Sec. 1983?

## TABLE OF CONTENTS


| | Page |
|---|---|
| Question Presented for Review | |
| Statement of Jurisdiction | ii |
| Statement of the Case | 1-9 |
| Argument: | |
| 1. The United States District Court should have heard the alleged unlawful eviction case under the doctrine of pendent jurisdiction | 10-13 |
| 2. The plaintiff has alleged sufficient facts to make out a violation of the RICO statute | 13-17 |
| 3. The plaintiff has alleged sufficient facts to make out a violation of 42 U.S.C. Sec. 1983 | 17-19 |
| Conclusion | 19 |
| Appendix | 1a-15a |


## TABLE OF CITATIONS

### Cases


| | |
|---|---|
| Aldinger v. Howard, 427 U.S. 1 (1976) | 12 |
| Britt v. Damson, 334 F.2d 896 (CA 9 Wash. 1964) | 10 |
| Luria Bros. & Co., v. Allen 469 F. Supp. 575 (W.D. Pa., 1979) | 18 |

| | Page |
|---|---|
| Lynch v. Household Finance Corp., 405 U.S. 538 (1978) | 18 |
| Morell v. Dept. of Social Services, 430 U.S. 658 (1978) | 18 |
| Monroe v. Pope, 365 U.S. 167 (1961) | 17 |
| Noland v. Gurney 566 F. Supp. 210 | 17 |
| Re Lane Foods 213 F. Supp. 133 (S.D.N.Y. 1963) | 12 |
| Financial General Bankshares Inc., v. Metger | 11 |
| Saine v. A.I.A. 582 F. Supp. 1299 (D. Co., 1984) | 16 |
| Schwartz v. Califano, 480 F. Supp. 509 (S.D.N.Y. 1979) | 17 |
| Sedima, S.P.R.L. v. Imrex, 89 L. Ed. 2d 346 (1985) | 16 |
| Sheridan v. Andrus 465 F. Supp. 622 (.D.C. Colo., 1979) | 18 |
| Siler v. Louisville & Nashville R. Co., 213 U.S. L75 (1909) | 10-11 |
| Spencer Co., Inc. v. Agency-Rent-A-Car-Inc. Fed. Sec. C. Rep. (C.C.H.) Sec. 98, 361 at 92, 214 (D. Mass. 1981) | 16 |

| | Page |
|---|---|
| United Mine Workers v. Gibbs 383 U.S. 715 (1966) | 10 |
| United States v. Aleman, 609 F. 2d. 298, 304 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 | 16 |
| United States v. Forsythe, 560 F. 2d. 1127-1130 (3rd Cir. 1977) | 16 |
| United States v. Scotto, 641 F. 2d. 47 (2d Cir. 1980, Cert. denied, 452 U.S. 961 (1981) | 14 |
| United States v. Turkette, 452 U.S. 576 | 14 |
| Wolf-Lillie v. Kenosha City Sheriff 504 F. Supp. 1 (E.D. Wis., 1979) vacated on other grounds 699 F. 2d. 864 (C.A.7) | 18 |

## STATEMENT OF JURISDICTION

Jurisdiction of this Court is involved pursuant to 28 U.S.C. 125713 and Rules of the Supreme Court of the United States, Rule 17.1 (c).

## STATEMENT OF THE CASE

1. On or about April 23, 1985, the Plantiff-Appellant filed a petition pursuant to Chapter 11 of the Bankruptcy Act in the United States Bankruptcy Court for the District of New Jersey. The Plantiff-Appellant was provided protection from all creditors under the jurisdiction of the United States Bankruptcy Court.

2. This filing was rejected, but a subsequent proper filing was made properly one day prior to the entrance of a judgment of eviction from the Tenancy Court, Ocean County, New Jersey. On or about July 1985, Defendant Lakechef, Inc., through its agent and principal, Edward D. Berger, filed a motion in Bankruptcy Court to lift a stay of eviction proceedings against the Plaintiff-Appellant in the Superior Court of New Jersey, Special Civil Part-Tenancy, Ocean County. The

said motion was filed by Daniel E. Berger, an associate of the law form of Heiring & Hoffman.

3. Subsequently, in May 1985, Plaintiff-Appellant augmented its business from 65 to 115 clients, each representing about an additional $100.00 per month for each client added to the business. Tenant successfully organized his business to a potential sale value of $250,000.00. His customers included medical doctors and other professional people who received urgent business calls.

4. Plaintiff-Appellant's business was a 24-hour telephone answering service, and its largest group of clients were doctors and other medical personnel.

5. During this period, Plaintiff-Appellant continued with its expansion and creditors did not object to the following expansion except Lakechef, Inc., the landlord, through Edward D. Berger and Daniel E. Berger.

6. As a result of the said motion, the Hon. Judge William Gindin, of the United States Bankruptcy Court for the District of New Jersey, ordered Plaintiff-Appellant to pay all rentals due and owing to Lakechef, Inc., between April and July

1985. Plaintiff-Appellant thereupon complied fully with the said Order.

7. Lakechef, Inc., despite this, re-submitted its motion to allow it to evict Plaintiff-Appellant. The motion was again submitted by Daniel E. Berger, of the firm of Heiring and Hoffman, on behalf of Edward D. Berger.

8. On or about the end of July, 1985, Hon. Judge Gindin this time granted the said motion to lift the stay which was completely opposite from his previous order.

9. On or about August 14, 1985, Plaintiff-Appellant received a Warrant of Removal served by one Richard Quense, a Constable of the County of Ocean, State of New Jersey. Immediately upon receipt, Plaintiff-Appellant-Camarota called the Tenancy Court of the Special Civil Part, Ocean County, New Jersey, and spoke to one Dolores Arena, Chief Clerk of the Tenancy Court to inform her of the warrant and that she could not move without a properly signed and entered Order of the United States Bankruptcy Court. Ms. Arena thereupon stated to Plaintiff Camorota "that warrant is invalid and should not have been issued".

10. Later the same day, John Breen, Esq., Attorney for Plaintiff-Appellant spoke to the said Ms. Arena and she again averred that the said warrant "should not have been issued and the issuance was based upon misinformation".

11. Immediately following Judge Gindin's decision, Attorney for Plaintiff-Appellant, John Breen, Esq., notified the court that Plaintiff-Appellant would appeal the said decision and requested a stay of the Order pending appeal. This was refused by Judge Gindin. Upon the entrance of an order by Judge Gindin dissolving the stay, plaintiff notified landlord of his intention to seek an appeal from the Honorable Anne Thompson, Judge of District Court for the District of New Jersey.

12. Plaintiff-Appellant was unable to file the notice of appeal immediately as his Honor, Judge Gindin did not enter the order until Friday evening, August 16, 1985 at 6:30 p.m. Plantiff-Appellant furthermore, did not receive a copy of the said Order until Wednesday, August 21, 1985, at 10:30 a.m., and only received that by Plaintiff-Appellant's principal going

to the United States Courthouse in Trenton and physically obtaining a copy there.

13. Immediately thereafter, Plaintiff-Appellant filed its notice of appeal and received a stay of the Order from the Hon. Anne Thompson, a Judge of the United States District Court for the District of New Jersey.

14. On the same August 21, 1985, Lakechef, Inc., via both Edward D. Berger and Daniel E. Berger, and Daniel E. Berger's firm, Heiring and Hoffman, illegally and wrongfully evicted Plaintiff-Appellant from their operation and office facility under color of laws with the aid of legal process wrongfully obtained and against Plaintiff-Appellant's civil rights.

15. The office facility from which Plaintiff-Appellant was evicted had had the capability to handle calls on a 24-hour basis as noted above. Plaintiff-Appellant had earlier affirmed to both the United States and New Jersey courts the very real danger to public health and well-being if its facilities were to be interrupted by an untoward eviction.

16. At the time Plaintiff-Appellant was evicted, no new warrant of removal had been issued as required by New Jersey

Rules of Practice and Procedure, nor had the landlord's attorney even applied for a new warrant. To remove the Plaintiff-Appellant without such a warrant is a violation of the said rules.

17. Representations were made by Daniel E. Berger to the New Jersey Courts that he in fact had a valid Order and would take all responsibility for the removal of Plaintiff-Appellant.

18. During the said illegal eviction, one Daniel Patria and one Darlene Burrell, wrongfully took possession of the Client's list of the Plaintiff-Appellant upon which were the name and addresses of all actual and potential clients of Plaintiff-Appellant.

19. After obtaining the said Client's List, Daniel Patria and Darlene Burrell sold the list to defendant Steven Tishman, an individual operating a similar service business and known to be a competitor in the same or similar marketplace as Plaintiff-Appellant.

20. Prior to this sale, Tishman had entered into a memorandum of agreement with the Plaintiff-Appellant that he would purchase the said Client's List for approximately eight

(8) times Tenant's monthly gross. The market value of the said list was about ten times the monthly gross, for Ocean County alone. There were also lists for six other counties in New Jersey, which were noted in Plaintiff-Appellant's preliminary plan to be filed with the Bankruptcy Court.

21. Immediately upon learning of the said illegal eviction, Plaintiff-Appellant notified the United States District Court for the District of New Jersey, and hearing was set in front of the Hon. Judge Thompson. At the said hearing, Daniel E. Berger failed to appear; and to date, Daniel E. Berger has avoided appearing before the Hon. Judge Thompson to explain why he acted without a court order in this matter.

22. Prior to the said eviction, Daniel E. Berger informed one Russell P. Cherkos, an associate of the law firm of Gilmore & Monahan, P.A., that Plaintiff-Appellant would be evicted on August 21, 1985 and that Russell P. Cherkos should thereupon move out certain equipment owned by Plaintiff-Appellant which his client, Hellyer Communications, Inc., had a creditor's interest in.

23. At the same time, there was pending an Order to Show Cause on behalf of Hellyer Communications, Inc., filed by Russell P. Cherkos, in the Bankruptcy Court regarding the said equipment and returnable on August 24, 1985.

24. Russell P. Cherkos prematurely exercised his requested relief in the said Order to seize the said equipment on August 21, 1985, during the aforesaid illegal eviction prior to the return date of his own application to the Bankruptcy court of August 24, 1985, and without the approval or knowledge of the Plaintiff-Appellant.

25. On the said August 24, 1985, Hon. Judge Gindin was apprised of Russell P. Cherkos' act on behalf of Hellyer Communications, Inc., under the supervision of Gilmore & Monahan. Judge Gindin said the matter was now in the United States District Court and therefore he would give Hellyer Communications, Inc. no relief; and, furthermore, that Russell P. Cherkos would be personally responsible for the safety of the said equipment as he had no right to his imprudent self-help on behalf of Hellyer Communications, Inc.

26. The said eviction would not have been possible at all without the co-operation of the Constable Richard Quense, who was the actual agent of the eviction, acting under his powers a Constable of the Special Civil Part, Ocean County, and Dolores Arena, who as Chief Clerk of the Special Civil Part-Tenancy Court, Ocean County, actually issued the invalid warrant and neglected to perform her duties in such a way as to prevent the wrongful eviction.

27. Plaintiff thereupon sought relief in the United States District Court of the District of New Jersey for violation of 42 USC 1983 (Civil Rights) and RICO, and for ancillary relief under state law.

28. Defendants sought summary judgment pursuant to Rule 56b.

29. The complaint was dismissed for failure to state a claim on which relief could be granted and for lack of subject matter jurisdiction.

30. Plaintiff timely filed his appeal to the United States Court of Appeals for the Third Circuit.

## ARGUMENT

*POINT ONE:* The United States District Court should have heard the alleged unlawful eviction case under the doctrine of pendent jurisdiction.

This claim arised out of a bankruptcy proceeding where the automatic stay was lifted, and while the appeal was being processed the appellee utilized an ancient warrant of removal in a landlord and tenant proceeding and substantially put appellant out of business.

The jurisdiction of the bankruptcy court is one which Congress has made exclusively federal jurisdiction. 28 U.S.C.A. Sec. 1334, 13 A Wright, Miller & Cooper, Jurisdiction 2d Sec. 3570. *Britt v. Damson*, 334 F2d 896 (CA 9 Wash. 1964).

*In Siler v. Louisvilla & Nashville R. Co.* 29 S. Ct. 451, 213 U.S. 175 (1909), the court established the rule that the Federal Court need not decide federal issues to decide a case but may resolve the case entirely on state grounds. It aviods decision of constitutional questions where possible and permits one lawsuit, rather than two, to resolve the entire controversy. In *United Mine Worker's v. Gibbs*, 383 U.S. 715, 724 (1966) the

Court again decided there was pendent jurisdiction to decide the state claim and held that as a matter of constitutional power, pendent jurisdiction exists whenever the state and federal claims "derive from a common nucleus of operative fact" and are such that a plaintiff "would ordinarily be expected to try them all in one judicial proceeding".

*Siler v. Louisville & Nashville R. Co.*, 213 U.S. 175 (1909), the Court established that a federal court may resolve a case entirely on state grounds.

*Financial General Bankshares, Inc., v. Metzger* 680 F.2d 768 (D.C. Cir., 1982), the Circuit Court upheld the District Court's refusal to hear a local claim. But the issue there was the scope of the fiduciary duty of a member of the District of Columbia bar. The Court of Appeals noted that it would have to solve "novel and unsettled" issues in local law. And there was an important state concern.

The argument for jurisdiction is stronger as in our case where the state claim had basis for its contention in the release of the automatic stay by the bankruptcy court.

It is clear that federal law that will support federal question jurisdiction may be the Constitution, a statute of the United States treaty or regulation. Here it is clearly a statute of the United States for the parties acted in accord with the Bankruptcy laws, attendent regulations and these utilized state laws to perpertrate this wrong upon the plaintiff-appellant. The Supreme Court has alluded to the fact that jurisdiction would be proper where the federal claim is one of which the federal court has exclusive jurisdiction so that judicial economy and convenience could be tied together with the additional argument that only a federal court may all of the claims be tried together. *Aldinger v. Howard*, 427 U.S. 1 (1976).

The instant proceeding, there is no doubt of the power of the Federal courts over the pending eviction, *Re Lane Foods* 213 F. Supp. 133 (S.D.N.Y. 1963). Defendants have willfully interfered with these rights. The federal civil rights and RICO claims are closely connected with the state law claims and the bankruptcy. Finally, because plaintiff has alleged violations of law by local state court officials, it is difficult to see how he

could obtain a firm hearing consistent with due process at this time from a state court.

*POINT TWO:* The Plaintiff has alleged sufficient facts to make out a violation of the RICO statute.

An integral part of the Organized Crime Control Act of 1970, Pub. L] 91-452, 84 Stat. 941, is Chapter 96 of Title 18 entitled "Racketeer Influenced and Corrupt Organizations," 18 U.S.C. Sec. 1961-1968 (referred to "RICO")

In addition to its penal sanctions 18 U.S.C. any "person" injured in his business or property by reason of a violation of RICO may sue in federal court and recover treble damages and costs, including reasonable attorneys' fees.

The action itself may be brought in any federal judicial district in which the defendant resides, is found, has an agent or transacts its affairs. Id. Sec. 1965(a). If a defendant cannot be served in the forum district, the Court may order service upon him in any district of the United States. Id. at Sec. 1965(b).

"Racketeering activity" is defined by the statute to include conduct which in and of itself would constitute various state and federal crimes. 18 U.S.C. 1961(1)

An "enterprise" is broadly defined by the statute to be any "individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. Sec. 1961(4). The enterprise can be either a legitimate commercial venue or one devoted to crime. *United States v. Turkett*, 452 U.S. 576, 101 S. Ct. 2525 (1981). *United States v. Scotto*, 641 F 2d 47 (2d Cir. 1980), cert. denied, 452 U.S. 961, 101 S. Ct. 3109 (1981). In *United States v. Scotto*, supra, the Second Circuit, after noting that the RICO statute was silent as to the sufficiency of the relationship between the pattern of raceteering and the enterprise, formulated this liberal general rule:

> We think that one conducts the activities of an enterprise through a pattern of racketeering when (1) one is enabled to commit the predicate offenses solely by virture of his position in the enterprise or involvement in or control over the affairs of the enterprise, or (2) the predicate offenses are related to the activities of that enterprise." 641 F.2d at 54.

The Court went on to note that it is not necessary that the misconduct advance the enterprise's affairs, that the enterprise authorize the illegal conduct, nor that the wrongdoer act with the purpose of enhancing his position in the enterprise. Ibid.

In summary then, a violation of RICO resulting in a potential treble damage exposure will occur when:

(1) the prospective defendant is associated with or employed by an enterprise;

(2) the prospective defendant commits two acts each of which constitutes a separate violation of statute, and;

(3) the acts can be construed to be related to the conduct of the enterprise's affairs.

It may be reasonably concluded that while the plaintiff's injuries need not be injuries in a competitive antitrust sense, they at the minimum must be such that they can be construed to flow from whatever enterprise connection is alleged to be involved.

The statute, while primarily concerned with organized crime, is strutured to proscribe certain defined conduct and not status. As one court has cogently expressed it, "certain conduct, not

a certain status . . . is prohibited." *Spencer Co., Inc., v. Agency-Rent-A-Car-Inc.*, Fed Sec. L. Rep. (C.C.H.) Sec. 98, 361 at 92, 214 (D. Mass. 1981). Ergo, assuming the requisite damage, a prima facie case is made out if the plaintiff proves that the defendant committed the proscribed acts regardless of who the defendant is, and regardless of what, if any, organizations-benevolent or otherwise-with which he is involved. There is no necessity to plead or prove a connection with organized crime. *United States v. Aleman*, 609 F.2d 298, 304 (7th Cir. 1979), cert. denied, 445 U.S. 946: *United States v. Forsythe*, 560 F.2d 1127-1136 (3d Cir. 1977).

While every common law fraud is not going to constitute a RICO violation leading to a windfall treble damage recovery, many such frauds should meet the statute's requirements. Under *Sedima, S.P.R.L. v. Imrex Co.* 87 L.Ed. 2d 346 (1985), recovery is possible under RICO so long as there is a "pattern of racketeering activity" Sedima at 361. This is true even if there is no injury separate and apart from the fraud alleged. This Supreme Court decision undercuts such decisions as *Saine v. A.I.A. Inc.*, 582 F. Supp. 1299 D. Colo., 1984) and

*Noland v. Gurney* 566 F. Supp. 210, issued by the same district court judge. In both proceedings, the determining factor in the decision was the supposed adequacy of existing remedies at common law. Again, Sedima makes it clear that this done not preclude recovery so long as a pattern of racketeering has been alleged.

*POINT THREE:* The Plaintiff has alleged sufficient facts to make out a violation of 42 U.S.C. Sec. 1983

*In Monroe v. Pope* 365 U.S. 167. (1961) the Court held that persons were acting under color of state law and could be sued under 42 U.S.C.A. Sec. 1983 although their acts were not authorized by the State and indeed were forbidden by the State. The net effect of Monroe, and of those that have followed it, is that the door to the Federal Court is now open to those who think they have been denied federally secured rights by persons acting under state law.

Sec. 1983 is essentially a procedural or remedial devise through which a party my seek relief for the deprivation of a constitutional right, *Schwartz v. Califano,* 480 F. Supp. 569 (S.D.N.Y. 1979), and the right may be for a violation of either

personal or property agreement. *Lynch v. Household Finance Corp.* 405 U.S. (1978). Wilfullness is not required under the statute. Sec. 1983 is to be interpretated according to its plain language and the substanitive statue includes all federal statutes not merely civil rights or equal protection laws. See also *Morell v. Dept. of Social Services* 436 U.S. 658 (1978)

Courts have consistently held that officials and private individuals may be held liable under 1983 for wrongful eviction. In *Wolf-Lillie v. Kenosha City Sheriff* 504 F. Supp. 1 (E.D. Wis., 1979), vacated on other ground 699 F2d 864 (C.A. 7), a sheriff was held liable under 1983 where his deputies executed against plaintiff's properties on the basis of a sale writ.

In *Luria Bros. & Co., v. Allen* 469 F. Supp. 575 (W.D. Pa., 1979), private individuals who knowingly violated plaintiff's rights by enforcing distraint under a Pennsylvania statute declared unconstitutional were held liable for violating the plaintiff's civil rights. Officials are liable if their participation is personal *Sheridan v. Andrus*, 465 F. Supp. 662 (D.C., Solo., 1979).

## CONCLUSION

It is therefore respectfully urged that the Order below be reversed and the appellant would proceed with his complaint and trial.

Respectfully submitted,

Nicholas Camarota, Pro se

118 Joanna Drive
Toms River, New Jersey 08753
(201) 349-5445

# APPENDIX

HIERING AND HOFFMAN
246 WASHINGTON STREET
TOMS RIVER, NEW JERSEY 08753
(201) 349-1800
ATTORNEYS FOR Creditor, LAKECHEF, INC.

| | |
|---|---|
| *Plaintiff*<br><br>In the Matter of JERSEY STATE TELEPHONE ANSWERING SERVICE, LTD. MAIN ANSWER, INC.<br><br>*vs.*<br><br>*Defendant* | UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY IN PROCEEDING UNDER CHAPTER 11 OF THE BANKRUPTCY CODE<br><br>*Docket No.*<br><br>Case No. 85-01682<br><br>*CIVIL ACTION*<br><br>ORDER OF RELIEF FROM STAY |

This matter having been brought before the Court on the Motion of Hiering and Hoffman, Daniel E. Berger, Esq., appearing for the Creditor, LAKECHEF, INC., for an Order granting the removal of the automatic stay upon the eviction proceeding of the Debtor from the Creditor's premises at Suite Q, 26 Main Street, Toms River, NJ, and for an Order setting forth the proper amount of use and occupancy payments to be paid by the Debtor-Tenant, and the Court having considered the matter, and the Court having read the Briefs and papers

submitted by the parties, and the Court having heard oral argument, and good cause appearing;

It is on this 16th day of August, 1985, ORDERED that the automatic stay on the Warrant for Removal of the Debtor from Suite Q, 26 Main Street, Toms River, NJ, the Creditor's premises, shall be lifted and removed at Suite Q, 26 Main Street, Toms River, NJ, immediately;

FURTHER ORDERED that my previous Interim Order that the Debtor make payment for use and occupancy of real property signed July 15, 1985 and filed July 15, 1985 still be valid and in effect, and such Order directed the Debtor to pay the sum of $275.00 per month to the Creditor for its use and occupancy of real property. Therefore, the Debtor shall pay a prorated portion of this amount, $275.00, for the portion of the month of August that it stays in possession up through and until the Debtor has left the premises and all of the Debtor's belongings have left the premises.

/s/

HONORABLE WILLIAM GINDIN
UNITED STATES BANKRUPTCY
COURT JUDGE

JOHN P. BREEN
1635 FOREST HILL
PLAINFIELD, NEW JERSEY 07060
Attorney for Defendant
(201) 754-2130

| | |
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| IN RE | |
| JERSEY STATE TELEPHONE ANSWERING SERVICE, LTD. MAIN ANSWER INC. | UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY |
| Debtor | CASE NO. 85-01682 |
| LAKE CHEF INC. | NOTICE OF APPEAL |
| Plaintiff | |
| vs. | |
| JERSEY STATE TELEPHONE ANSWERING SERVICE, LTD. MAIN ANSWER INC. | |
| Debtor Defendant | |

Jersey State Telephone Answering Service, Ltd., Main Answer Inc., Debtor-Defendant, appeals to the District Court from the Order of the Bankruptcy Court entered in this adversary proceeding on day of August, 1985. The parties to the Order appealed from and the names and addresses, of their respective attorneys are as follows:

Lake Chef, Inc. Plaintiff

Hiering & Hoffman, Esqs.

246 Washington Street, Toms River, New Jersey 08753

Jersey State Telephone Answering Service Ltd.—

Main Answer Inc.

John P. Breen, Esq.

1635 Forest Hill, Plainfield, New Jersey 07060

JOHN P. BREEN
1635 Forest St.
Plainfield, N.J. 07060

Dated: August 9, 1986

JOHN P. BREEN
1635 FOREST HILL
PLAINFIELD, NEW JERSEY 07060
Attorney for Defendant
(201) 754-2130

| | | |
|---|---|---|
| IN RE | : | |
| JERSEY STATE TELEPHONE ANSWERING SERVICE LTD. MAIN ANSWER INC. | : | UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY |
| Debtor | : | CASE NO. 85-01682 |
| LAKE CHEF INC. Plaintiff | : | MOTION FOR STAY OF ORDER PENDING APPEAL |
| vs | | |
| JERSEY STATE TELEPHONE ANSWERING SERVICE LTD., MAIN ANSWER INC. Debtor Defendant | : | |

Jersey State Telephone Answering Service Ltd., Main Answer Inc. applicant, would show the Court the following:

1. Within 10 days of its entry, applicant filed a Notice of Appeal from an Order Centered herein on the 16th day of August, 1985, which Order granted Lake Chef Inc. plaintiff-creditor the lifting of stay of State court proceedings to removing debtor from premises of plaintiff.

2. The applicant complied with the Order of the Honorable William Gindin dated July 8, 1985 and paid the sum of $1,063.33 on

July 11, 1985 computed as follows: $238.33 for April, 1985, $275.00 for May, $275.00 for June and $275.00 for July, 1985.

3. On August 16, 1985 Honorable William Gindin entered the Order to lift the stay, contrary to his Order of July 8, 1985, recognizing the defendant-debtor in posssesion of Room Q and, all rentals due were paid through July 1985 as per Order of Judge Gindin of July 8, 1985.

4. Jersey State Telephone Answering Service Ltd.-Main Answer Inc. is primarily an emergency telephone answering service handling emergency calls on a 24 hour a day basis. About 85% of debtors customers are doctors.

5. Debtor-plaintiff cannot move from its present location at this particular time. As set forth in filed statements, Debtor has a location to move to but it will not be operational for about 90 days.

6. Plaintiff-creditor has securities in the amount of $650.00 also capital improvements to their property in the amount of $1,718.20 which are offsets to debtor applicant. At present rent is charged at the rate of $275.00 per month and Debtor is prepared to continue paying same.

7. Plaintiff-creditor is not exposed to any money damages and the only party that would be severely harmed would be the debtor-defendant, in that the debtor will be instantly out of business if the stay is not granted.

8. If said Order is not stayed pending appeal the applicants appeal will become moot, it will be left without remedy herein, and it will suffer irreparable injury, in that it will be prevented from continuing its business.

WHEREFORE applicant prays that the Court's Order entered herein on August 16, 1985 be stayed pending appeal, and that it have such other and further relief as is just.

JOHN P. BREEEN
1635 Forest Hill
Plainfield, N.J. 07060
Attorney for Debtor

Dated: August 9, 1985

JOHN P. BREEN
1635 FOREST HILL
PLAINFIELD, NEW JERSEY 07060
Attorney for Defendant

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|---|---|
| IN RE<br><br>JERSEY STATE TELEPHONE ANSWERING SERVICE, LTD. MAIN ANSWER INC.<br>Debtor<br><br>LAKE CHEF INC.<br>Plaintiff<br><br>vs<br><br>JERSEY STATE TELEPHONE ANSWERING SERVICE, LTD. MAIN ANSWER INC.<br>Debtor Defendant | UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY<br><br>CASE NO. 85-01682<br><br>ORDER GRANTING INTERIM STAY |

There came on to be heard the motion of Jersey State Telephone Answering Service, Ltd., Main Answer Inc., for a stay pending its appeal to United States District Court of an Order entered on August 16, 1985 and it appearing to the court that the applicant is entitled to such stay, it is;

ORDERED, that any action pursuant to the Order being appealed from be stayed pending the determination of the appeal from such order by Jersey State Telephone Answering Service, Ltd., Main Answer Inc. Debtor, for the interim period

from the date of this Order until Friday, August 23, 1985 when this matter is to be decided by this court.

_____

J.D.C

Dated:

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

| | | |
|---|---|---|
| NICHOLAS CAMAROTA, etc., et al., | : | Civil No. 85-4687 |
| Plaintiffs | : | |
| v. | : | ORDER |
| DANIEL E. BERGER, et al., | : | |
| Defendants | : | |

This matter having come before the court on defandants' motion for summary judgment, and the court having considered the matter without oral argument pursuant to FED. R. CIV. P. 78, and for good cause shown; it is on this 20th day of November 1985,

ORDERED that the Eighth and Ninth Counts of the complaint be dismissed as to all defendants for failure to state a claim on which relief can be granted; and it is further

ORDERED that the remainder of the complaint be dismissed for lack of subject matter jurisdiction.

ANNE E. THOMPSON, U.S.D.J.

attorneys' fees, interest, and costs of suit.

## SEVENTH COUNT

1. Plaintiffs repeat all allegations contained in the Parties, the Jurisdiction, the Statement of Facts and the First through Sixth Count as though included at length herein.

2. Defendants, by their action in evicting Plaintiffs, have deprived the Plaintiffs of their sole base of operations, caused the cessation of their business and prevented them from carrying out their reorganization, which said reorganization might have ensured the survival of Tenant as a viable company.

3. By their act, Defendants interfered with Plaintiffs' prospective economic advantage, causing Plaintiffs to lose any such prospective advantage by their activities, and thus causing a measurable loss to the Plaintiffs.

WHEREFORE, Plaintiffs demand judgement of Defendants, jointly, severally, and in the alternative, for actual, compensatory, punitive and exemplary damages, together with attorneys' fees, interest, and costs of suit.

## EIGHTH COUNT

1. Plaintiffs repeat all allegations contained in the Parties, the Jurisdiction, the Statement of Facts and the First through Seventh Count as though included at length herein.

2. Defendants, by their actions, have acted under color of law so as to deprive Plaintiffs of their civil rights, to wit, the right to petition for redress of grievances via the courts, as guaranteed by the United States Constitution and 42 USC 1983 et. seq.

3. As a result of the Defendants' actions, Plaintiffs were unable to avail themselves of redress to the United States courts, in that the relief they were seeking was denied them in as much as Defendants' actions rendered the requested relief meaningless in view of Defendants' destruction of the Plaintiffs' business interests.

WHEREFORE, Plaintiffs demand judgement of Defendants, jointly, severally, and in the alternative, for damages under 42 USC 1983 et. seq., as therein provided, together with attorneys' fees, interest, and cost of suit.

## NINTH COUNT

1. Plaintiffs repeat all allegations contained in the Parties, the Jurisdiction, the Statement of Facts and the First through Eighth Counts as though included at length herein.

2. Defendants, by their actions, have violated the provisions of 18 USC 1961 et. seq., the Racketeering and Corrupt Influenced Organizations Act (RICO).

WHEREFORE, Plaintiffs demand judgement of Defendants jointly, severally, and in the alternative, for damages under 18 USC 1961 et. seq., as provided, together with attorneys' fees, interest, and costs of suit.

## TENTH COUNT

1. Plaintiffs repeat all allegations contained in the Parties, the Jurisdiction, the Statement of Facts and the First through Ninth Counts as though included at length herein.

2. Defendants, Edward D. Berger, Daniel E. Berger, Lakechef, Inc., and Heiring & Hoffman maliciously and without probable cause, and against an existing order of a United

States court, caused a warrant of removal to be wrongfully issued out of a New Jersey state court and had Tenant evicted by Constable Richard Quense.

3. As a result of the said Defendants' action, Plaintiffs were damaged as shown above.

WHEREFORE, Plaintiffs demand judgement of Defendants, Edward D. Berger, Daniel E. Berger, Lakechef, Inc., and Heiring & Hoffman jointly, severally and in the alternative, for actual, compensatory, punitive and exemplary damages, together with attorneys' fees, interest, and costs of suit.

## ELEVENTH COUNT

1. Plaintiffs repeat all allegations contained in the Parties, the Jurisdiction, the Statement of Facts and the First through Tenth Counts as though included at length herein.

2. Defendants, by their actions, trespassed on Tenant's leasehold while he was in possession thereof.

3. As a result of said trespass on Tenant's leasehold, both Tenant and the other Plaintiffs suffered severe and continuing

damage, financial hardship and other losses, as well as continuing expenses caused by the said trespass.

WHEREFORE, Plaintiffs demand judgement of Defendants, jointly, severally and in the alternative, for actual, compensatory, punitive and exemplary damages, together with attorneys' fees, interest, and costs of suit.

Nicholas Camarota
P.O. Box 4506
Tom's River, NJ 08754
Attorney Pro Se

NICHOLAS CAMAROTA, individual &
MAIN ANSWER, INC.
Plaintiff,

vs.

DANIEL E. BERGER et al
Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action - 85-4687

Civil Action

NOTICE OF APPEAL

TAKE NOTICE that the undersigned, NICHOLAS CAMAROTA, attorney pro se, hereby appeals from the Order of Dismissal signed by the Honorable Anne Thompson, U.S.D.J. on 20 November 1985 and filed with the Clerk on 21 November 1985.

NICHOLAS CAMAROTA, Pro Se

DATED:

**UNITED STATES COURT OF APPEALS**
**FOR THE THIRD CIRCUIT**

**No. 85-5803**

NICHOLAS CAMAROTA, individual and
MAIN ANSWER, INC.

v.

DANIEL E. BERGER, WILLIAM T. HEIRING, JR., RONALD E. HOFFMAN, Lakechef INC., a New Jersey corporation, EDWARD D. BERGER, RUSSELL P. CHERKOS, GILMORE & MONAHAN, P.A., RICHARD QUESNE, DANIEL PATRIA, SR., DALENE BURRELL, HELLYER COMMUNICATIONS, INC., an Indiana corporation, DOLORES ARENA, JOHN DOE, JIM DOE, and STEVEN TISHMAN,

NICHOLAS CAMAROTA, Appellant

(Civil No. 85-4697 - D.N.J. - Trenton)
District Judge: Honorable Anne E. Thompson

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Submitted Under Third Circuit Rule 12(6)
June 5, 1986

BEFORE: SEITZ, WEIS and MANSMANN, **Circuit Judges.**

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## JUDGMENT ORDER

After consideration of all the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court:

_____

Circuit Judge

ATTEST:

_____

Sallary Mrvos, Clerk

DATED:

**UNITED STATES COURT OF APPEALS**

**FOR THE THIRD CIRCUIT**

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NICHOLAS CAMAROTA, Appellant

(Civil Action No. 85-4697 - D.N.J. - Trenton)

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## SUR PETITION FOR REHEARING

PRESENT: ALDISERT, **Chief Judge,** SEITZ, ADAMS, GIBBONS, WEIS, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, and MANSMANN, **Circuit Judges.**

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

8-1-86 By the Court,

SALLY MRVOS
Clerk

_____
Circuit Judge

DATED: AUG 1, 1986